United Nations E/2013/67

Economic and Social Council

Distr.: General
9 May 2013

Original: English

Substantive session of 2013
Geneva, 1-26 July 2013
Item 13 (h) of the provisional agenda*
International cooperation in tax matters

Further progress in strengthening the work of the Committee of Experts on International Cooperation in Tax Matters

Report of the Secretary-General

Summary

The present report examines further progress achieved in strengthening the work of the Committee of Experts on International Cooperation in Tax Matters and its cooperation with concerned multilateral bodies and relevant regional and subregional organizations. It highlights the major recent outputs of the Committee, such as the 2011 revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries and the 2012 United Nations Practical Manual on Transfer Pricing for Developing Countries. The report also provides an update on the United Nations capacity development programme in international tax cooperation and reviews current developments and prospects regarding the deficiencies and gaps in international tax cooperation, as identified in the report of the Secretary-General on the role and work of the Committee (E/2012/8), and suggests possible ways to address them.

* E/2013/100.

13-32800 (E) 200513

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I. Introduction

1. In its resolution 2012/33, the Economic and Social Council requested the Secretary-General to report to the Council on further progress achieved in strengthening the work of the Committee and its cooperation with concerned multilateral bodies and relevant regional and subregional organizations. By the same resolution, the Council decided to hold a one-day meeting during the first half of 2013 to consider international cooperation in tax matters, including institutional arrangements to promote such cooperation, and encouraged the President of the Council to issue invitations to representatives of national tax authorities to attend the meeting. That meeting will be held in New York on 29 May. The present report has been prepared in response to those requests.

2. The present report draws upon the modalities and conclusions of the two previous reports of the Secretary-General, on the strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters (E/2011/76), and on the role and work of the Committee (E/2012/8).

II. Committee of Experts on International Cooperation in Tax Matters

Terms of reference

3. In its resolution 2004/69, the Council decided that the Ad Hoc Group of Experts on International Cooperation in Tax Matters would be renamed the Committee of Experts on International Cooperation in Tax Matters and that the Committee should:

(a) Keep under review and update as necessary the *United Nations Model Double Taxation Convention between Developed and Developing Countries* and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*;

(b) Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;

(c) Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;

(d) Make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition;

(e) Give special attention to developing countries and countries with economies in transition in dealing with all the above issues.

Membership, composition and term of office

4. The Committee comprises 25 members nominated by Governments and acting in their own expert capacity. The members, appointed for four-year terms by the

Secretary-General, after notification has been given to the Council, are drawn from the fields of tax policy and tax administration and are selected to reflect an adequate equitable geographical distribution, representing different tax systems.

5. The terms of office of the current members of the Committee will end on 30 June 2013, with the new members expected to serve from July 2013 until 30 June 2017. To that effect, the Secretary-General issued a note verbale dated 28 February 2013 in which he sought nominations for the membership of the Committee.[1]

Working methods

6. The Committee meets annually for five working days at the United Nations Office at Geneva and submits its report to the Council at its substantive session.

7. In its resolution 2006/48, the Council recognized that the Committee had agreed to create, as necessary, ad hoc subcommittees composed of experts and observers who would work throughout the year to prepare and determine the supporting documentation for the agenda items under consideration at the Committee's regular sessions. The Council also recognized that in order to deal with issues relating to the agenda on a continuous basis, subcommittees should use electronic communications where possible, but that the efficient operation of these subcommittees might in future require some face-to-face meetings.

8. As the Secretary-General noted in paragraph 47 of his 2012 report (E/2012/8):

> All Committee members who responded to the questionnaire agreed that face-to-face meetings were necessary in order for their work to be effective, reflecting a view that has often been put forward by the Committee. They felt that it was not possible to fulfil the mandates of the subcommittees using only electronic means as real progress was often contingent on face-to-face meetings where issues could be fully discussed and consensus reached.

9. In practice, the major achievements of the Committee, namely, the revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the United Nations Model Convention)[2] and the approval of the United Nations Practical Manual on Transfer Pricing for Developing Countries (the United Nations Transfer Pricing Manual), were heavily dependent on face-to-face meetings.

10. In its resolution 2006/48, the Council also requested the Secretary-General to establish a trust fund to receive voluntary contributions from Member States and other institutions interested in providing financing for the Committee's activities in support of international cooperation in tax matters, including the participation of experts from developing countries. In its resolution 2008/16, the Council noted the importance of adequate representation from developing countries in the meetings of the subcommittees and working groups, invited the Secretary-General to intensify efforts to seek appropriate resources and urged all Member States and relevant organizations to contribute generously to the trust fund. The trust fund was established, but to date there have been no contributions.

[1] Available from http://www.un.org/esa/ffd/tax/documents/TaxExperts2013.pdf.

[2] Available from http://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf.

11. The Committee has relied heavily on its subcommittees and working groups (there is little practical difference between the two) working intersessionally. Currently, there are four active subcommittees and one working group, as follows:

(a) Subcommittee on Tax Treatment of Services;

(b) Subcommittee on Dispute Resolution;

(c) Subcommittee on Capacity-building;

(d) Subcommittee on Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

(e) Working Group on Tax Treaty Issues related to Climate Change Mechanisms.

12. There have been other important subcommittees in recent years dealing with issues such as the treatment of "permanent establishments" in the United Nations Model Convention (essentially the test of whether there has been sufficient economic engagement with a country to allow it to tax profits made there under a bilateral tax treaty), the update of the United Nations Model Convention in general and the drafting of the United Nations Transfer Pricing Manual. However, since the work of such subcommittees has been concluded, for instance, by the Committee agreeing on the texts for the revised United Nations Model Convention or for the United Nations Transfer Pricing Manual, those subcommittees have been dissolved. The current subcommittees have been empowered to complete particular work before they are dissolved at the conclusion of the term of the current membership of the Committee on 30 June 2013.

III. Major outputs of the Committee

United Nations Model Double Taxation Convention between Developed and Developing Countries

13. Among the main achievements of the Committee is the 2011 revision of the United Nations Model Convention. Double tax treaties (or conventions) are bilateral agreements between two countries, which allocate taxing rights over income between those countries, thereby preventing double taxation of income. The prevention or elimination of double taxation is a significant aspect of the investment climate of countries, which is essential for investment flows, the exchange of goods and services, the movement of capital and persons, and the transfer of technology.

14. Double tax treaty models are generally used by countries as a starting point when negotiating bilateral tax treaties. The United Nations Model Convention and the Organization for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital (the OECD Model Convention)[3] are the two most widely used models. They are the source for most of the more than 2,500 tax treaties currently in force, thus providing a profound influence on international tax treaty practice. The United Nations Model Convention tends to be relied upon more by developing countries, while the OECD Model Convention tends to be relied upon more by developed countries.

[3] OECD, *Model Tax Convention on Income and on Capital 2010* (Paris, 2010).

15. While many provisions of the United Nations Model Convention and the OECD Model Convention are similar or identical, the Models diverge in important areas, reflecting the different memberships and priorities of the two organizations. In particular, the United Nations Model Convention tends to preserve greater taxing rights for the "source" country where profits arise, with the residence country of the person making the profits having to give a credit for taxes paid or an exemption from taxes on those profits.

16. This is the case when services are being provided, for example, in situations where a lower level of economic engagement with a country is required under the United Nations Model Convention in order for that country to tax profits from that economic engagement. There is increasing discussion among countries, including developed ones, about how to secure appropriate taxing rights for source countries, especially in the context of the digital economy. The approach of the United Nations Model Convention, which places less emphasis than the OECD Model Convention on a more substantial presence as an indicia of economic engagement in a country, is likely to be more, rather than less, relevant in the future.

17. The United Nations Model Convention also favours outcomes that are more easily administered, reflecting the fact that many developing country administrations do not have sufficient resources and that complex solutions, which on the surface seem fair to all stakeholders, may in practice intrinsically favour developed countries or sophisticated taxpayers.

18. Compared to the OECD Model Convention, the United Nations Model Convention is more favourable to source country "withholding taxes", whereby a person paying an amount overseas is required to withhold the relevant tax amount from the payee and remit it to the tax authorities. Countries basing their treaties on the United Nations Model Convention tend to have higher withholding tax rates and to impose withholding taxes on royalties, such as for the use of a patent or trademark. By contrast, the OECD Model Convention does not provide for withholding taxes on royalties, although, in practice, many OECD countries seek them.

19. With the current international discussion about the need to ensure taxing rights over economic engagement in one's territory, and concern about profit shifting through the off-shoring of intangible property, such as the aforesaid patents or trademarks, there is likely to be renewed interest in withholding taxes as an efficient and relatively secure means to counter tax avoidance and enforce source State taxing rights.

20. In practice, the United Nations Model Convention is heavily relied upon by developing countries in tax treaty negotiations. On the one hand, by drawing upon OECD work where it is relevant for developing countries, the United Nations Model acknowledges the significance of that work; on the other hand, by explaining possible alternatives it helps countries to decide which approach better suits their needs and priorities when negotiating bilateral tax treaties. Even though the ultimate sovereign decisions are made by the countries themselves, by detailing the pros and cons of the different options and by providing explanations on its dissimilarities with the OECD approach, the United Nations Model Convention helps to reduce the possibility of divergent interpretations of the treaties, which could prove costly to taxpayers and tax administrations.

21. The United Nations Model Convention requires constant re-examination in order to adequately reflect new tax issues that arise as economies and ways of doing business evolve. The Committee has expressed the hope that the Model would be updated more regularly in the future. This is an important objective, especially since some of the articles of the Model continue to require a closer reconsideration than had been possible for the 2011 revision. This will have resource implications for the Committee and its secretariat.

22. Since the completion of the revised United Nations Model Convention in 2011 and its official launch in 2012, the greater emphasis in the Model on source country taxation is perhaps best understood in the context of the current work undertaken on the treatment of the taxation of services transactions. In October 2012, for example, the Committee agreed to have a provision in the next version of the United Nations Model Convention that would allow source country taxation of fees paid by residents of a country to residents of the treaty partner for "fees for technical services". While there will be a discussion on the definition of such services and how to administer such a provision, there is clear recognition of the economic significance of services flows, their special characteristics and the fact that many developing countries already have such a provision in their treaties. As always, countries will need to make sovereign decisions about how much they seek to attract such flows and to what extent they should be taxed. This involves a spectrum of options, and the views of countries will differ as to which point on the spectrum their policies should reflect. As with its more recent work, the work of the Committee in that regard will no doubt reflect its role in informing and advising countries in making the decisions and in implementing the agreements they reach in bilateral treaties.

United Nations Practical Manual on Transfer Pricing for Developing Countries

23. In its recent programme of work, the Committee devoted time and effort to transfer pricing, which culminated in the adoption, during its 2012 session, of the United Nations Practical Manual on Transfer Pricing for Developing Countries. The Manual will be officially launched at the special meeting of the Economic and Social Council on international cooperation in tax matters, to be held in New York on 29 May 2013. The programme of work reflects the importance of transfer pricing for countries in general, and the particular need for more practical assistance for developing countries in these very complex issues.

24. Transfer pricing refers to the mechanism for pricing international transactions between companies that are members of a multinational enterprise group. On its own, it represents a regular practice for multinational operations to undertake since it allows the enterprises to identify, for example, which parts of the group make a profit and which operate at a loss. However, if the method used to determine the price of such transactions, for whatever reason, does not reflect their true value, it is possible that profits might effectively be shifted to low-tax or no-tax jurisdictions, and losses and deductions to high-tax jurisdictions. This unfairly deprives a country of tax revenue, and developing countries are especially likely to suffer from such "profit shifting". Furthermore, those countries will often be the least well equipped to respond to such profit shifting.

25. Both the United Nations and OECD have essentially followed the same test as to whether transfer pricing has occurred at a proper price or range of prices, namely, whether it has occurred at an "arm's length price", the price that would be paid in a market with each participant acting independently in its own interest. The theory of the "arm's length price" is well accepted and is embodied in article 9 ("Associated enterprises") of both the United Nations Model Convention and the OECD Model Convention and in bilateral tax treaties based on them. The difficulty lies in applying the principle in practice, especially since many multinational enterprises have unique intangibles that are difficult to value or engage in complex transactions involving many different elements that would not be replicated in any market.

26. Addressing these practical complexities relies heavily on the availability of data and expert skills, which, in turn, poses particular difficulties for developing countries, with the relevant data often not being available or too expensive to access, or requiring special skills in order for it to be adjusted or properly interpreted. While consistent with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, the United Nations Transfer Pricing Manual in effect provides a novel and needs-based approach to explaining what those guidelines mean for developing countries and how they can be applied in a way that responds to their priorities and realities.

27. The United Nations Transfer Pricing Manual comprises 10 chapters, as follows, in addition to a foreword and two appendices:

- Chapter 1 ("Introduction") serves to introduce the main elements in the Manual and sets out a broad range of transfer pricing issues for developing countries, in particular on the general complexity of the issues, the frequent lack of knowledge and skills to address them and the availability of data on comparable transactions.
- Chapter 2 ("The business environment") provides an outline of the business background on transfer pricing. It recognizes the importance, for tax policymakers and administrators involved in transfer pricing, of understanding the motivations and operations of multinational enterprises so that the relevant issues can be dealt with effectively and with the least possible negative impact on the investment climate.
- Chapter 3 ("The legal environment") reviews the transfer pricing legislation in a global context and seeks to identify key practical issues from the perspective of developing countries. There is no template or model legislation that works in every situation. Rather, the legislation has to be adapted to the needs and legal environment of a particular country.
- Chapter 4 ("Building transfer pricing capability") addresses issues involved in establishing transfer pricing capability in developing countries, such as setting up a dedicated transfer pricing unit in the tax administration.
- Chapter 5 ("Comparability analysis") covers the key aspects of comparability analysis, such as the modalities for the comparison between the conditions of intragroup transactions and the conditions of transactions between independent parties taking place in comparable circumstances. It addresses the serious practical difficulties many developing countries face in finding comparables and, where necessary, in adjusting them.

- Chapter 6 ("Transfer pricing methods") describes the methods that can be used to determine "arm's length prices" and describes how to apply the methods in practice. The chapter also identifies some of the main issues involved in selecting and applying the appropriate methods in specific practical situations.

- Chapter 7 ("Documentation") discusses the importance of documentation requirements in making it easier for tax authorities to review a taxpayer's transfer pricing analysis and to avoid disputes or to reach a timely resolution of any dispute that may arise. The chapter also recognizes the potential burden of documentation requirements on the taxpayer.

- Chapter 8 ("Audits") acknowledges the complex and resource-intensive nature of transfer pricing audits and the importance of using limited resources in the most effective way. The need to exercise quality control when cases are being selected for audit is therefore emphasized. In that regard, a substantial part of the chapter focuses on the need to ensure that risk assessment processes are as effective and resource efficient as possible. The chapter also addresses the practical issues of organizing and staffing transfer pricing audits, and possible sources of information for such audits.

- Chapter 9 ("Dispute resolution") recognizes the potential of dispute avoidance and resolution procedures in minimizing controversies, costs, uncertainties and delays for both tax administrations and taxpayers. The role of advance pricing agreements in this area is discussed, including an analysis of the possible benefits of such agreements for developing countries, as well as the relevant areas of concern.

- Chapter 10 ("Country practices") incorporates four papers prepared by tax administration officials in Brazil, China, India and South Africa, in which the officials address the experiences of their respective countries in the area of transfer pricing. The chapter is not intended to reflect a consensus view. Rather, its special value lies in presenting a country's experience without casting any judgement on the practice of the country in respect of the arm's length approach.

28. The two appendices of the United Nations Transfer Pricing Manual provide practical examples in the areas of comparability analysis and documentation. As noted in the foreword, the Manual was conceived as a "living work" that should be regularly revised and improved, including by the addition of new chapters and/or additional materials of special relevance to developing countries, including country practices.

Other agenda items

29. Cross-border value added tax (VAT) issues are among the topics currently addressed by the Committee. More than 150 countries have VAT, or an essentially similar tax, and a goods and service tax. These taxes are an important revenue creator for tax administrations and are increasingly important in developing countries. Thus far, there has been little coordination in terms of indirect taxation, and there is therefore scope for useful work to be undertaken by the Committee towards fostering more cooperative approaches that will not duplicate the efforts of other organizations. While this is the first time VAT is being considered by the

Committee, and only particular VAT issues are being addressed, the step represents a significant development in the light of the importance of VAT to many developing countries.

30. Similarly, the Committee's work on the interpretation of the United Nations Model Convention in relation to profits from emissions permits represents the first evaluation of environmental tax-related issues, and the Committee's agenda item on resource extraction issues for developing countries has broad potential relevance. The establishment of a subcommittee to address the guidance role of the Committee on capacity development issues has also been significant.

IV. United Nations capacity development programme on international tax cooperation

31. In its resolution 2012/33, the Economic and Social Council recognized the work of the Financing for Development Office of the Department of Economic and Social Affairs in developing, within its mandate, a capacity development programme in international tax cooperation aimed at strengthening the capacity of the ministries of finance and the national tax authorities in developing countries to develop more effective and efficient tax systems, which support the desired levels of public and private investment, and to combat tax evasion, and requested the Office, in partnership with other stakeholders, to continue its work in that area. During the past year, further progress has been made in developing the above-mentioned programme, as indicated below.

32. Owing to the fact that the Financing for Development Office of the Department of Economic and Social Affairs provides secretariat support to the Committee, its capacity development programme draws, to a large extent, on the products of the Committee, with a view to disseminating and operationalizing them as capacity development tools for the benefit of developing countries. In devising its capacity development programme, the Office also takes full advantage of the unique expertise and networks of the Committee members, who have been generously providing support to the programme on a pro bono basis.

33. Accordingly, the first area of focus of the programme is on strengthening capacity to negotiate, administer and interpret tax treaties, drawing on the 2011 version of the United Nations Model Convention. Many developing countries lack adequate understanding of the provisions set out in the Model, especially its 2011 version. Moreover, many developing countries lack adequate skills and experience to efficiently negotiate, interpret and administer tax treaties. This may result in difficult, time-consuming and, in the worst case scenario, unsuccessful negotiation on or application of the tax treaties. In order to address such knowledge and skills gaps, the Financing for Development Office is developing a comprehensive set of training tools, including: (a) a United Nations course on double tax treaties; (b) a United Nations capacity development programme on double tax treaty negotiations; and (c) a United Nations capacity development programme on the administration of tax treaties.

34. The United Nations course on double tax treaties is the most basic capacity development tool of the series, introducing the fundamentals of tax treaties and providing participants with a solid understanding of the United Nations Model

Convention. It covers the recent updates to the Model, as well as similarities and differences in respect of the OECD Model Convention. In addition to analysing the treaty rules for the allocation of taxing rights between countries over cross-border income, the course deals with treaty provisions for the elimination of international double taxation and administrative provisions aimed at ensuring the effective application of tax treaties. The course includes practical examples and case studies to enable participants to gain confidence in applying the knowledge and skills acquired during the course. The course is designed for officials in the ministries of finance and national tax authorities at various skill levels, and it is expected that the full-length version can be conducted over a period of four or five days.

35. Work to develop the course is at an advanced stage and is expected to be finalized in 2013. A select group of renowned experts, from both developed and developing countries and representing all the regions of the world, has been contracted to develop PowerPoint slides and accompanying text for the respective modules of the course. The materials produced so far for the course have been undergoing a technical review in order to ensure that they adequately reflect the positions, priorities and interests of developing countries. The most suitable individuals chosen to carry out the technical reviews were the members of the Committee since they are the custodians of the United Nations Model Convention and the authors of its 2011 update. They generously agreed to undertake this function on a pro bono basis. To date, two technical reviews have been conducted, in Geneva on 12 and 13 October 2012 and in Rome on 26 and 27 January 2013. The final technical review will be held in the fourth quarter of 2013, after which the course will be finalized. The first training event is planned for the first quarter of 2014. At a later stage, complementary material with a regional focus will be developed for the course in order to ensure its relevance at the regional level, and a "train-the-trainer" programme will be carried out in order to enable regional experts to teach the course. An online version of the course will also be developed and made available to developing countries.

36. In order to disseminate the 2011 version of the United Nations Model Convention and to prepare developing countries for the forthcoming course on double tax treaties, the Financing for Development Office, in cooperation with the Italian branch of the International Fiscal Association, organized a one-day seminar in Rome on 30 January 2013 on the theme "International tax cooperation for sustainable development: the role of the United Nations Model Double Taxation Convention". Apart from the Italian tax community, the seminar was also attended by tax experts and professionals from developing countries and from the international and regional organizations of tax administrations.

37. The seminar was successful in generating a discussion on the role of the United Nations Model Convention in the context of international tax cooperation for sustainable development. After an introduction on the relationship between international tax cooperation and financing for sustainable development, the main aspects of the United Nations Model Convention and its recent update were analysed in detail. In addition, the most significant similarities and divergences between the United Nations Model Convention and the OECD Model Convention were discussed, with a view to avoiding double taxation and encouraging investments. The seminar included a panel discussion on current issues in international taxation and the future of international cooperation in tax matters from a developmental perspective.

38. The United Nations capacity development programme on double tax treaty negotiations and the United Nations capacity development programme on the administration of tax treaties will be more advanced and geared for the more specialized officials within the ministries of finance and the national tax authorities of developing countries. The relevant activities for the programmes commenced in late 2012 and beginning of 2013.

39. An expert group meeting on tax treaty negotiation and capacity development was held in New York on 13 and 14 December 2012. The group of experts, which largely comprised members of the Committee, shared its experiences in the area of double tax treaty negotiation, with a focus on the needs of developing countries at different levels of development and having diverse macroeconomic conditions and goals. The experts also reviewed available materials and capacity development tools, including those authored by the Committee and determined how, and to what extent, the resources could be effectively used and either improved or complemented, for the purposes of delivering capacity development initiatives in this area. In addition, they put forward proposals on the content and implementation of such capacity development activities. Specifically, they decided that instead of developing its own course on tax treaty negotiation, the United Nations should join forces with OECD, which already has a very comprehensive training programme in this area. The role of the United Nations will be to ensure that the programme is offered to a wide spectrum of developing countries and to provide inputs to the materials that relate to the United Nations Model Convention. It was also decided that a number of practical papers needed to be developed on the negotiation of tax treaties and to be offered to developing countries free of charge.

40. The Financing for Development Office and the International Tax Compact launched a joint project on strengthening the capacity of ministries of finance and national tax authorities in developing countries to effectively negotiate, interpret and administer tax treaties. The financial contribution for the project was provided by the German Federal Ministry for Economic Development and Cooperation and implemented by the International Tax Compact. The ultimate goal of the project is to support the development of a comprehensive set of capacity-building tools that will be used in developing countries and that will be demand driven, will adequately reflect the needs and level of development of those countries and will complement, rather than duplicate, any existing and available tools. As a first step towards that goal, two parallel meetings on capacity-building on tax treaty negotiation and administration were held in Rome on 28 and 29 January 2013 at the headquarters of the International Fund for Agricultural Development. Twenty-five representatives from the competent authorities of developing countries participated in the meetings, representing the following countries: Bangladesh, Barbados, Cambodia, Costa Rica, Dominican Republic, Ecuador, Georgia, Ghana, Kazakhstan, Lao People's Democratic Republic, Lesotho, Malawi, Morocco, Myanmar, Namibia, Panama, Peru, Republic of Moldova, Senegal, Thailand, United Republic of Tanzania, Uruguay and Zimbabwe. The meetings contributed to identifying the needs of developing countries in the area of tax treaty negotiation and administration; taking stock of the available capacity development tools at the disposal of developing countries; and determining the actual skills gaps and challenges faced by developing countries in negotiating and administering their tax treaties.

41. In the follow-up to the meetings held in Rome in January 2013, a number of papers, focusing mainly on the administration of tax treaties, were drafted by select

experts. The draft papers will be presented by the authors during a two-day meeting to be held in New York on 30 and 31 May 2013, at which 30 to 35 representatives of the national tax authorities of developing countries will participate, with a view to further revising the papers so that they can be compiled into the United Nations Handbook on Selected Issues in the Administration of Tax Treaties for Developing Countries, which will be issued by the end of June 2013. At a later stage, going beyond the current project, the Handbook will be used as a basis for capacity development programmes.

42. In the near future, the United Nations capacity development programme on international tax cooperation will also focus on strengthening the capacity of developing countries to apply the transfer pricing analysis and, in particular, the arm's length principle to transactions between associated multinational enterprise groups. Many developing countries are vulnerable to abuse and revenue loss from tax evasion in the complex area of transfer pricing because their capacities and resources in that area are often limited and insufficient. These needs are addressed in the United Nations Transfer Pricing Manual, adopted by the Committee at its session held in October 2012. The Manual is a useful tool that provides assistance to developing countries in the practical application, within applicable resources and other constraints, of the arm's length principle, which is embodied in article 9 of both the United Nations Model Convention and the OECD Model Convention. The United Nations Transfer Pricing Manual will be launched online during the special meeting of the Economic and Social Council on international cooperation in tax matters, to be held in New York on 29 May 2013 and will be published in hard copy shortly thereafter. Following the launch of the Manual, the Financing for Development Office will commence activities aimed at developing a comprehensive set of training tools based on the Manual. As a first step, a technical meeting will be organized to determine the content and scope of the training materials to be developed, based on actual demand in developing countries.

43. In addition the Financing for Development Office is implementing a development account project on strengthening the capacity of the national tax administrations of developing countries in Latin America to reduce tax transaction costs and thereby maximize their tax revenues. Tax transaction costs comprise the administrative costs incurred by a Government in collecting tax revenues (also known as "collection costs") and the burden to taxpayers in complying with tax laws (also known as "compliance costs"). As such, these costs have an impact on the ability of countries to attract investments and on the amount of tax revenues available for development funding.

44. The project is being carried out in cooperation with the Inter-American Center of Tax Administrations. It focuses on the development of an empirical methodology aimed at measuring and assessing tax transaction costs, with a view to reducing them and, as a result, increasing tax revenues. A first draft of the methodology was recently presented and reviewed during a workshop held in Panama City on 27 and 28 February and on 1 March 2013, which was attended by representatives of the national tax authorities of 10 Latin American countries, namely, Brazil, Chile, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Panama, Paraguay, Peru and Uruguay. Currently, the methodology is being tested in two pilot countries (Costa Rica and Uruguay), and Brazil has indicated that it is planning to test the methodology during the forthcoming months in its own system and at its own expense. In addition, other member countries of the Inter-American Center of Tax

Administrations have expressed an interest in the methodology, and it is foreseeable that, after the conclusion of the current project, there will be a demand for follow-up activities/projects aimed at implementing the methodology in other countries in Latin America and, eventually, in other regions.

V. Cooperation with concerned multilateral bodies and relevant regional and subregional organizations

Organization for Economic Cooperation and Development

45. The Committee and its secretariat cooperate actively with OECD. Representatives of the United Nations and OECD are often invited to speak at events held on the various aspects of international tax cooperation, organized by either organization. OECD observers participate in the annual sessions of the Committee and OECD experts actively participate in several subcommittees. The secretariat participates as an observer in the OECD Committee on Fiscal Affairs and has been invited to participate as an observer at relevant meetings of OECD working parties, including those dealing with tax treaties and transfer pricing. The secretariat has also participated in the OECD Tax and Development Initiative and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

46. During the past year, OECD participated in the following United Nations events in the area of international tax cooperation: (a) a special meeting of the Economic and Social Council on international cooperation in tax matters (New York, 15 March 2012); (b) an expert group meeting on transfer pricing and capacity development in tax matters (New York, 14 March 2012); (c) meetings on capacity-building in tax treaty negotiation and administration (Rome, 28 and 29 January 2013); and (d) a seminar on international tax cooperation for sustainable development and the role of the United Nations Model Convention (Rome, 30 January 2013). In addition to representing OECD at those events, OECD staff provided valuable technical contributions by sharing their expertise and materials.

Bretton Woods institutions

47. The World Bank and the International Monetary Fund participate regularly in the annual sessions of the Committee. Representatives of those organizations also frequently contribute inputs to the work of the Committee, either through its subcommittees or in their individual capacities. For instance, at the previous session of the Committee, a representative of IMF contributed a paper on hybrid entities, focusing on the classification of non-resident entities, and a representative of the World Bank authored a survey of the technical assistance and capacity-building resources available to developing countries in the area of transfer pricing.

48. In addition, during the past year, the World Bank and IMF participated in the above-mentioned special meeting of the Council on international tax cooperation and the expert group meeting on transfer pricing and capacity development in tax matters. The secretariat also participates in events organized by the World Bank and IMF when they are relevant to its work programme as, for example, in the IMF conference on revenue mobilization and development, held in Washington, D.C., from 17 to 19 April 2011.

Regional organizations

49. To date, at the regional level, the Committee has formed the closest cooperation with the Inter-American Center of Tax Administrations, with which, as mentioned above, the Financing for Development Office is implementing a joint project on strengthening the capacity of national tax administrations of developing countries in Latin America to reduce tax transaction costs and thereby maximize their tax revenues. The Center participates actively in various other activities of the capacity development programme undertaken by the Office. For its part, the Office participated in the Center's 2012 Technical Conference held in Amsterdam on 16 October, where it delivered a presentation on the 2011 version of the United Nations Model Convention.

50. In addition, the African Tax Administration Forum and the Study Group on Asian Tax Administration and Research participated in activities organized by the Financing for Development Office. It is hoped that closer working relationships with other regional organizations will be developed in future, especially as the Department of Economic and Social Affairs capacity-building presence in this area increases.

51. Representatives of the European Commission regularly attend the Committee's annual session and the Commission assisted in arranging for an editor to help to prepare the United Nations Transfer Pricing Manual for consideration by the Committee at its previous session. The tax cooperation developments in the European Union, such as on a proposed financial transactions tax[4] and a proposed common consolidated corporate tax base,[5] continue to be of great interest beyond that region. The Commission's 30-point action plan against aggressive tax avoidance and attendant recommendations to Member States[6] may have potential implications for non-European Union countries.

Group of 20

52. The 2011 report to the Development Working Group of the Group of 20 on supporting the development of more effective tax systems, jointly prepared by the secretariats of IMF, OECD, the United Nations and the World Bank, in consultation with the African Tax Administration Forum and the Inter-American Center of Tax Administrations, addressed how the Group could contribute to strengthening the enabling environment in which tax systems can be made as effective as possible in assisting development, including by supporting ongoing initiatives of international and other organizations active in tax-related activities. The report recommended concrete actions to be undertaken by the member countries of the Group.

53. Most recently, during their meeting in Washington, D.C., on 18 and 19 April 2013, the finance ministers and central bank governors of the Group of 20 members stated in their communiqué that more needed to be done to address the issues of international tax avoidance and evasion, in particular through tax havens, as well as non-cooperative jurisdictions. They encouraged all jurisdictions to implement the

[4] http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_en.htm.

[5] http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm.

[6] http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/index_en.htm.

exchange of information standards and to sign or express interest in signing the Convention on Mutual Administrative Assistance on Tax Matters. They expressed their support for the automatic exchange of information and asked for development of a new multilateral standard on that exchange, taking into account country-specific characteristics. They also welcomed the progress made in the development of an action plan by OECD on tax base erosion and profit shifting and looked forward to a comprehensive proposal and substantial discussion in July 2013.

Other stakeholders

54. The Committee and its secretariat have also forged effective links with civil society, the private sector and academia. Active participation in the Committee's annual sessions has been increasing, and members of the Committee and its secretariat continue to make themselves available upon request to explain the work of the United Nations on tax issues to business forums and at events organized by non-governmental organizations and to receive feedback in that regard. Some organizations, such as the International Bureau of Fiscal Documentation, have contributed research expertise to the Committee on a number of its projects. The secretariat has also successfully organized events jointly with non-governmental organizations that have fed into the work programme of the Committee. Since many non-governmental organizations have taken leading parts in the current debates about the taxing of multinational enterprise groups, they will continue to be an important voice in the tax and development debate and contribute to greater international cooperation, especially in addressing tax avoidance.

VI. Review of gaps in international tax cooperation

55. In paragraphs 16 to 27 of his report on the role and work of the Committee (E/2012/8), the Secretary-General identified a number of gaps and weaknesses in the area of international tax cooperation, which are grouped together in categories set out below. While the continuing constraint on resources places inherent limits on the Committee's role in filling such gaps, and such work has to be carefully focused, the current situation regarding the gaps, as it relates to the work of the Organization on tax cooperation, is set out below.

56. The new membership of the Committee will be selected by the Secretary-General and will commence its functions in July 2013, meeting for the first time in October 2013. The status of the Committee continues to be that of an expert, rather than an intergovernmental, body. In other words, the members of the Committee act in their own capacity, rather than as representatives of Governments.

57. While views continue to differ as to whether or not the Committee should be converted to an intergovernmental body, as outlined in previous reports (see, for example, E/2011/76, para. 43), the fact remains that there is still no truly global all-inclusive norm-setting body for international tax cooperation at the intergovernmental level. This has particular resonance at a time when the rules of international taxation are matters of great public interest in both developed and developing countries and governmental responses are expected.

58. In addition to an increasing recognition of the central role of tax systems in development, there is a strong focus globally on more effectively combating tax avoidance and evasion, with its corrosive effect on development, particularly in the least developed countries. The amount of taxes paid by multinational enterprise groups, and the internal payments made for intangibles within those groups, are currently the subject of broad public and political debate.

59. The Group of 20/OECD initiative on base erosion and profit shifting, for example, proposes to address tax planning strategies that exploit loopholes in tax rules, thereby reducing profits solely for tax purposes or shifting profits to low-tax jurisdictions. In its initial report on the issue,[7] OECD calls for the development of a comprehensive action plan to address base erosion and profit shifting by June 2013. The action plan will aim to identify actions needed to address base erosion and profit shifting, set deadlines for the implications of the proposed actions and identify the resources and methods required to implement actions that restrict base erosion and profit shifting.

60. While most agree that international tax norms and their practical application need to be at least re-evaluated, no single intergovernmental forum with universal relevance and participation exists to take up such a task. Views differ as to whether or not such a forum should be sought, but the debate on whether the Committee should be converted to an intergovernmental body needs to be rekindled and brought to a conclusion, with a view to determining which results will best advance the interests of developing countries, including the least developed ones.

61. While every effort is made to make the Committee as representative as possible of developing country issues and priorities, particular challenges exist, including insufficient, and insufficiently diverse, developing country input into the subcommittee and working group aspect of the Committee's work, owing to resource constraints.

62. While some subcommittees have communicated extensively so far by electronic means, the reports of the Committee reflect the critical importance of face-to-face meetings on technically nuanced and sensitive issues. Neither e-mail correspondence nor communications by telephone or at teleconference facilities can meet these needs and allow the Committee's mandate to be effectively met. In practice, the major achievements of the Committee have been heavily dependent upon the face-to-face meetings of the subcommittees. Given that members have to fund their own participation at those meetings, it is in effect very difficult to achieve proportionate developing country input into the Committee's work.

63. As noted above, a capacity development programme is being rolled out by the Financing for Development Office in 2013. The activities will initially be focused on tax treaties, and at a later stage will cover an additional area of transfer pricing. In implementing the programme, the Office is responding to actual demand from developing countries and will work in coordination with other international and regional organizations active in the field to try to avoid unnecessary duplication.

64. While the increased focus on tax and development issues has had the beneficial effect of encouraging additional actors with additional ideas and approaches to enter the field, there is an attendant risk that uncoordinated and

[7] OECD, *Addressing Base Erosion and Profit Shifting* (Paris, 2013).

perhaps conflicting responses might dim the fervour of both donors and recipients. Additional efforts are required in terms of the coordination of activities and the harmonization of working methods.

65. In the area of the tax "judiciary", there continues to be an insufficient focus on such issues as building capability and the sharing of experiences. This deficiency is likely to become increasingly stark since focus on the effectiveness and efficiency of the administrative and judicial arbiters on tax issues lags behind, even while there is a growing focus on tax policy and administration issues for developing countries. That gap or weakness will become more significant as the complexity and high stakes of the issues, such as transfer pricing evaluations, become increasingly important for greater numbers of developing countries.

66. In addition, there is an increasing debate on what constitutes proper compliance with legal obligations, as compared with what might be considered in many countries to be formally acceptable but beyond what is legally acceptable upon a more substantive reading of the law. The responses of courts and tribunals will inevitably differ on some of these questions. Helping to develop solid court and tribunal systems that can effectively address these issues and provide coherent answers to such important questions, consistent with State sovereignty and the distinct legal and legislative background of particular countries, will contribute to greater certainty, and even where there are differences between countries to greater transparency in respect of the different approaches. This will be to the benefit of all stakeholders and tax systems, and it is an area where the United Nations can play its role.

67. Important developments in South-South information sharing have occurred since the submission of the 2012 report of the Secretary-General, including the finalization of the United Nations Transfer Pricing Manual, which has contributed to the sharing of experiences among developing countries. The Manual has also helped to shed a light on some of the early experiences of developed countries in the area of transfer pricing, which may be of greater importance to countries setting out on the transfer pricing "journey" than the more recent experiences of the developed countries.

68. Chapter 10 of the United Nations Transfer Pricing Manual, in which Brazil, China, India and South Africa outlined their transfer pricing experiences, has a "thought leadership aspect" in this regard. The chapter also helps point to issues on which there may not be a consensus yet, but where the next version of the Manual, and other discussions, such as in OECD, will need to seek a consensus that works for countries generally.

69. There have also been welcome developments towards greater cooperation among Brazil, China, India, the Russian Federation, and South Africa, with a meeting of the heads of the relevant tax authorities being held in 2013 and a communiqué in which agencies agreed to share best practices and cooperate in promoting capacity-building, in countering avoidance and non-compliance practices and ensuring the effective exchange of information. The authorities agreed to share resources and knowledge and to extend cooperation in tax administration.[8]

[8] See Government of India press release (18 January 2013), available from http://pib.nic.in/newsite/erelease.aspx?relid=91684; see also International Tax Review, "BRICS tax cooperation special focus" (28 January 2013), available from http://www.internationaltaxreview.com/Article/3145946/BRICS-tax-cooperation-special-focus.html.

70. In addition, there have been regional initiatives to promote greater sharing of information and practices, as noted in the 2012 report of the Secretary-General. The United Nations and the Committee could play a useful role, in view of the breadth of the Organization's membership and of the participation in its work, in facilitating such initiatives, giving them wider prominence and helping to link them, and reducing any unnecessary and unintended differences in approach that would result in increased compliance costs for taxpayers and increased administration costs for Governments.

71. The outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", recognized the need for significant mobilization of resources to promote sustainable development. For that purpose, Governments agreed to establish an intergovernmental committee of experts to propose options for an effective sustainable development financing strategy. A dedicated working group has been created under the United Nations Task Team on the Post-2015 United Nations Development Agenda, with domestic resource mobilization as an integral part of the Task Team's work programme. Since tax bases remain narrow and Government revenues remain low in many developing countries, appropriate tax policies and combating tax evasion are central elements in raising revenues to finance public investment. International tax cooperation could play a vital role in a sustainable development financing strategy.

VII. Conclusions

72. **The Committee's recent achievements, particularly the update of the United Nations Model Convention and the completion of the United Nations Transfer Pricing Manual, have demonstrated the prominent role of the United Nations in the area of international tax cooperation, in particular with regard to its development dimension. A stronger and more focused capacity-building effort will further help to meet the ambitious and crucial mandate given to the Committee by the Economic and Social Council and contribute to enhancing cooperation between the United Nations and relevant international and regional bodies.**

73. **While the unique and distinct role of the Committee is well accepted, additional resources are urgently needed to support its work and to enable it to fully meet its mandate. These increased resources are necessary, inter alia, to support the work of the Committee and its subcommittees and to ensure that the subcommittees are duly balanced, representative and effective. At a time when a small amount of resourcing can "capture a moment" and potentially yield greater and enduring improvements, it is essential that all countries in a position to do so explore ways of supporting the work of the United Nations on international tax and development, through extrabudgetary contributions, as appropriate.**

74. **The special meetings of the Economic and Social Council on international tax cooperation emphasize the central role of the Council in strengthening the work of the Committee and its cooperation with concerned multilateral bodies and relevant regional and subregional organizations. The meetings provide a unique opportunity for a global dialogue among all stakeholders in the area of tax and development. Such dialogues and related joint activities are crucial in building bridges between relevant institutions and processes and in reducing the risk of inefficiencies, misunderstandings and unwarranted duplication of efforts.**